

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

Civil Docket No.: 06 CA 1137 MLW

Christine Varad,
Plaintiff,

v.

Reed Elsevier Incorporated,
d.b.a. *LexisNexis, LexisNexis Risk &
Information Analytics Group, Inc.*,
Defendant.

**PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION FOR A SUMMARY JUDGMENT**

Christine Varad v. Reed Elsevier Incorporated

Doc. 73 Att. 2

TAB 2

Exhibit B

Steven Gall
Gall and Gall Company
8555 North Dixie Drive
Dayton, Ohio 45414

Fax: 937 264-4909

April 3, 2006

RE: File Number: 75270/ES1165 : Varad, Christine

Dear Mr. Gall,

I am writing in response to our telephone conversation this afternoon. The following statements included in your report in connection with my name and what appears to be information provided to you from multiple data bases are false:

1. Sioux Falls, South Dakota 57117

I have no knowledge of this address, have never set foot in Sioux Falls, South Dakota and have never used such an address for any purpose, at any time.

2. 88 Greenfield Lane, Scituate, MA 02066 from 1987-2005.

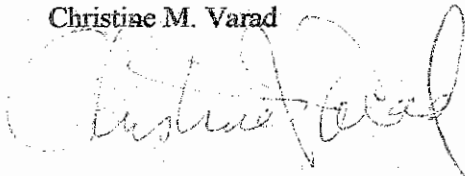
This data is incorrect and fails to correctly report that from approximately 1987-1991 I was married to Rajan Varad and resided within the marriage at 3 Pleasant Street, Burlington MA 01803.

The false entries must be corrected immediately. The false data constitutes a red flag to alert me to the fact that there is likely additional false and injurious information being disseminated within background reports in connection with my name. I have contacted an attorney who specializes in this area of law and will contact you further after I have consulted with her.

I request that you provide me with the names of each and every data base that generated information utilized in your report on me. I can be reached at 781 545 5506 if you have any questions.

Sincerely,

Christine M. Varad



CHRISTINE VARAD
P.O. BOX 536
MILTON, MASSACHUSETTS 02186

Most
of


GALL & GALL
COMPANY, INC.
THE INFORMATION SOURCE™

4/5/2006

Christine M. Varad
PO Box 586
Milton, MA 02186

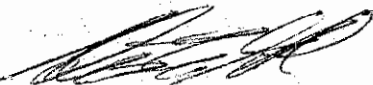
In re: F+W Publishing applicant screening report

Ms. Varad,

This letter should answer your request for information on the screening report requested by F+W Publishing through our company. We have updated, per your request, the Address Source Manager information on our records and we have sent a corrected copy to F+W Publishing as well as your copy, which is enclosed in this correspondence.

Address Source Manager is provided by ACCURINT, a division of Lexis Nexus, PO Box 538358, Atlanta, Georgia 30353. Toll Free Phone (888) 332-8244.

I am also enclosing a copy of an email sent to me, by you, in reference to a book you are writing. Should you have further questions or concerns, please call me.



Steven E. Gall / President
Gall & Gall Company, Inc
8555 N. Dixie Drive
Dayton Ohio 45414-2463
Phone: 937-264-4900 ext. 223 or 1-800-759-4255 ext. 223
Fax: 937-264-4909 or 1-800-765-7393

enclosure: report & email

Mo SJ.
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James Swift
Operations Manager
Lexis Nexis Accurint
6601 Park of Commerce Boulevard
Boca Raton, Florida 33487
Fax: 561/981-0866

ext.: 4510

April 17, 2006

Dear Mr. Swift,

I am contacting you in response to a letter from your client, Steven E. Gall of Gall and Gall Company, which specified Lexis Nexis Accurint databases as the sources that provided him with false, incorrect and injurious information about me which was subsequently disseminated in a background check requested and paid for by my employer, F&W Publishing, in February of this year. See report No.:75270/ES1165.

I contacted Lexis Nexis Accurint this morning by telephone in regard to this problem. My requests for information were met with rude and improper reply by Stephanie Apicella, ACD. I was improperly directed to contact Compliance 360, Steve McGraw, president, at 1185 Sanctuary Parkway, Suite 250, Alpharetta GE 30064 or by phone at 678/992-0262, Fax: 678/992-0266 for answers to my questions regarding Lexis Nexis Accurint and this consumer credit reporting issue. I am contacting you for the reason that I have been refused any information as to a valid contact at Lexis Nexis Accurint able to act in resolution of this problem.

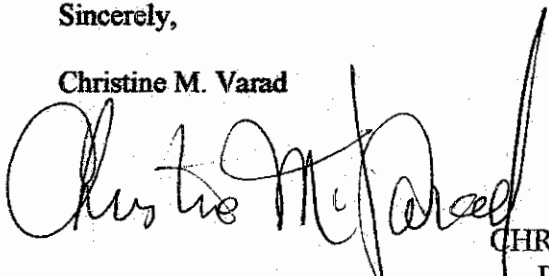
I am requesting my rights pursuant to the Fair Credit Reporting Act, FCRA 15 U.S.C. 1681 et seq. and M.G.L. c. 93 § 50-62 inclusive. I request a complete copy of my file and an opportunity to dispute and correct any and all improper and incorrect information contained therein. I request a complete investigation of my file and databases utilized to compile the file. Your web site publicly states that such files routinely contain "sub second access" information as to historical addresses, associates, relatives, business affiliates and assets. Again, I am requesting a copy of my complete file.

In addition I request (1) a record of each and every inquiry relating to a credit transaction of any kind, my name and Lexis Nexis Accurint databases and files for the last two years and (2) the names and addresses of the recipients of those inquiry requests.

I can be contacted at 781 545 5506 or by mail at P.O. Box 583, Milton, Massachusetts 02186.
Thank you for your attention to this matter.

Sincerely,

Christine M. Varad



CHRISTINE VARAD
P.O. BOX 583
MILTON, MASSACHUSETTS 02186

Accurint

6601 Park of Commerce Blvd
Boca Raton, FL 33487

Phone: 561-893-8000
Toll Free: 1-888-332-8244
Fax: 561-981-0799
www accurint.com

April 20, 2006

Christine M. Varad
P.O. Box 583
Milton, MA 02186

Dear Miss Varad:

Thank you for your inquiry regarding the data maintained in the Accurint database. Accurint appreciates your efforts to assist us in preventing fraud and ensuring our files contain the most accurate information available.

Kindly be advised that Accurint is **NOT** a Consumer Reporting Agency, and as such, Accurint is not governed by the Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.). Accurint data is not permitted to be used to grant or deny credit, make employment decisions, or make tenant and housing screening decisions, or any other uses regulated by the Fair Credit Reporting Act. Accurint purchases and resells data collected by outside companies, which cover public records and commercially available data sources, in full compliance with all applicable federal and state privacy laws. We do not examine or verify our data, nor is it possible for our computers to correct or change data that is incorrect – Accurint can only provide the data that was provided to us.

Although Accurint is not a Consumer Reporting Agency, please be reassured that both Accurint, and your personal information contained in Accurint databases, are regulated by the federal government and are subject to the Gramm-Leach-Bliley Act (15 U.S.C. § 6801 et seq.) and the Federal Drivers Privacy Protection Act (18 U.S.C. § 2721 et seq.). These laws regulate who may access private, non-public data, and the purposes for which it may be accessed. Accurint fully complies with these and all other applicable federal and state laws. These laws, however, do not require Accurint to provide reports of the information contained within our databases, nor do the laws require Accurint to correct or change potentially inaccurate information.

If you complete and properly notarize the enclosed form, Accurint will attempt to provide you with the source that supplied the potentially incorrect information. Accurint urges you to contact those companies directly and seek to have them correct or update your information. Only our suppliers can change or update information – Accurint cannot change or update inaccurate information.

If you are concerned about possible identity theft you should contact the three national Consumer Reporting Agencies listed below immediately to obtain a copy of your credit report.

M02
or

Equifax
PO Box 740241
Atlanta, GA 30374-0241
Order Credit Report: 800-685-1111
Report Fraud: 800-525-6285

Experian
PO Box 2104
Allen, TX 75013
Order Credit Report: 888-397-3742
Report Fraud: 888-397-3742

Trans Union
PO Box 390
Springfield, PA 19064-0390
Order Credit Report: 800-916-8800
Report Fraud: 800-680-7289

If you would like to receive a copy of your consumer report please access our Consumer Access Program at the following link:

<http://www.lexisnexis.com/terms/privacy/data/obtain.asp>

Again, thank you for your interest in Accurint. Accurint greatly appreciates your efforts to assist us in preventing fraud and ensuring our files contain the most accurate information available.

Sincerely,

Consumer Inquiry Department

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James Swift
Operations Manager
Lexis Nexis Accurint
6601 Park of Commerce Boulevard
Boca Raton, Florida 33487
Fax: 561/981-0866

April 30, 2006

Dear Mr. Swift,

Thank you for your letter of April 20, 2006 regarding my April 17, 2006 inquiry as to background information on me retained in Lexis Nexis Accurint data bases and sold to your client, Steven E. Gall of Gall and Gall Company for resale as a employment background check to my employer, F&W Publishing, in February of this year.

Your letter advises me that Lexis Nexis Accurint is not a consumer reporting agency invoking the jurisdiction of 15 U.S.C. §1681 et seq. for the reason that Accurint data is not permitted to be utilized to make employment decisions thereby invoking the regulations of the Fair Credit Reporting Act. I disagree with your assessment of the law. I consider that where Lexis Nexis knew, or should have known, that (1) Gall and Gall Company is engaged in the business of providing employment background checks and (2) that Gall and Gall Company routinely uses data supplied to it by Lexis Nexis Accurint to provide background check reports to client/employers for decision-making purposes as to prospective employees, Lexis Nexis Accurint openly and knowingly permits Gall and Gall Company to use Lexis Nexis Accurint data for employment decision making purposes with the result that its own acts subject itself to the authority of the Fair Credit Reporting Act. I will be contacting the Fair Trade Commission for full clarification as to this issue before filing a lawsuit to enforce my rights under the law should Lexis Nexis Accurint fail to provide me with a copy of my file or any other data rightfully requested and required to be provided to me by Lexis Nexis Accurint under the law.

In the meantime, I again state for your data base information that only the following addresses are validly connected with my maiden name, Christine M. Mooney and my married name, Christine M. Varad:

- 1. **P.O. Box 583**
Milton, MA 02186
- 2. **88 Greenfield Lane**
Scituate, MA 02066
- 3. **3 Pleasant Street**
Burlington, MA 01801
Approximately 1987-1991

All other addresses in connection with my name from 1980-2006 are false, incorrect and reflect illegal acts of fraud and identity theft. Cease and desist disseminating any other address data for any purpose in connection with my name.

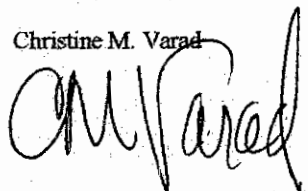
Again, I am requesting my rights pursuant to the Fair Credit Reporting Act, FCRA 15 U.S.C. 1681 et seq. and M.G.L. c. 93 § 50-62 inclusive to be provided with a complete copy of my file as retained by Lexis Nexis Accurint and an opportunity to dispute and correct any and all improper and incorrect information contained therein. Your web site publicly advertises to client such as Gall and Gall Company that such files will routinely contain "sub second access" information as to historical addresses, associates, relatives, business affiliates and assets. Again, I am requesting a complete copy of my file including any such additional information as advertised.

I am also entitled to and will require (1) a record of each and every inquiry relating to my name of any kind responded to by data contained in Lexis Nexis Accurint database files for the last two years and (2) the names and addresses of the recipients of those inquiry requests.

I can be contacted at 781 545 5506 or by mail at P.O. Box 583, Milton, Massachusetts 02186. Thank you for your attention to this matter.

Sincerely,

Christine M. Varad



CHRISTINE VARAD
P.O. BOX 583
MILTON, MASSACHUSETTS 02186

MSJ
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Accurint

6601 Park of Commerce Blvd
Boca Raton, FL 33487

Phone: 561-893-8000
Toll Free: 1-888-332-8244
Fax: 561-981-0799
www.accurint.com

May 23, 2006

Ms. Christine Varad
P. O. Box 583
Milton, MA 02186

Dear Ms. Varad:

Thank you for your inquiry regarding the data maintained in the Accurint database. Accurint appreciates your efforts to assist us in preventing fraud and ensuring our files contain the most accurate information available.

Kindly be advised that Accurint is **NOT** a Consumer Reporting Agency, and as such, Accurint is not governed by the Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.). Accurint data is not permitted to be used to grant or deny credit, make employment decisions, or make tenant and housing screening decisions, or any other uses regulated by the Fair Credit Reporting Act. Accurint purchases and resells data collected by outside companies, which cover public records and commercially available data sources, in full compliance with all applicable federal and state privacy laws. We do not examine or verify our data, nor is it possible for Accurint's computers to update or change incorrect information -- Accurint can only provide the information that was provided to us.

Although Accurint is not a Consumer Reporting Agency, please be reassured that both Accurint, and your personal information contained in Accurint databases, are regulated by the federal government and are subject to the Gramm-Leach-Bliley Act (15 U.S.C. § 6801 et seq.) and the Federal Drivers Privacy Protection Act (18 U.S.C. § 2721 et seq.). These laws regulate who may access private, non-public data, and the purposes for which it may be accessed. Accurint fully complies with these and all other applicable federal and state laws. These laws, however, do not require Accurint to provide reports of the information contained within our databases, nor do the laws require Accurint to correct or change potentially incorrect information.

With regards to your request to provide you with the names of the companies that have performed a search on you, as Accurint is not governed by the Fair Credit Reporting Act, we do not disclose the names of our customers.

Accurint has determined that the information you describe in your request was provided to Accurint by one or more of the three national consumer reporting agencies. Accurint urges you to contact the three national consumer reporting agencies directly to change or update incorrect information. Again, Accurint does not examine or verify information contained within our database, nor is it possible for Accurint's computers to update or change incorrect information -- Accurint can only provide the information that was provided to us.

If you are concerned about possible identity theft you should contact the three national Credit Reporting Agencies listed below immediately to obtain a copy of your credit report.

Equifax
PO Box 740241
Atlanta, GA 30374-0241
Order Credit Report: 800-685-1111
Report Fraud: 800-525-6285

Experian
PO Box 2104
Allen, TX 75013
Order Credit Report: 888-397-3742
Report Fraud: 888-397-3742

Trans Union
PO Box 390
Springfield, PA 19064-0390
Order Credit Report: 800-916-8800
Report Fraud: 800-680-7289

Sincerely,

Accurint Consumer Inquiry Department

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CERTIFIED MAIL
RETURN RECEIPT REQUESTED

June 3, 2006

James Swift
Operations Manager
Lexis Nexis Accurint
6601 Park of Commerce Boulevard
Boca Raton, Florida 33487

Dear Mr. Swift,

Pursuant to the provisions of Massachusetts General Laws, chapter 93A, § 9, and also pursuant to federal standards as set forth in FTC v. Sperry & Hutchinson Co., 405 U.S. 233, 244 n.5 (1972), I hereby make written demand for relief.

On April 17, 2006, I requested pursuant to the Fair Credit Reporting Act, FCRA 15 U.S.C. 1681 et seq. and M.G.L. c. 93 § 50-62 inclusive, a complete copy of my file as held by Lexis Nexis Accurint and as disseminated to Gall and Gall Company and an opportunity to dispute and correct any and all improper and incorrect information contained therein. I informed Lexis Nexis Accurint that Gall and Gall Co. had pointed to Lexis Nexis Accurint as the source of false and injurious information that was disseminated to my employer and to others. I requested an opportunity to completely investigate all of the data contained in my file and of the databases utilized to compile that file information including all data as publicly advertised by Lexis Nexis Accurint to be routinely contained in such files or "sub second access" information detailing historical addresses, associates, relatives, business affiliates and assets of the target individual. In total, I requested that Lexis Nexis Accurint provider me with a complete copy of my file.

At that time I also requested (1) a record of each and every inquiry relating to a credit transaction of any kind, my name and the Lexis Nexis Accurint databases and files for the last two years to include (2) the name and address of each and every source of data on me as provided to and utilized by Lexis Nexis Accurint and (3) the names and addresses of the recipients of each and every inquiry request.

Lexis Nexis Accurint unfairly and deceptively failed to provide access to the file and responded in writing on April 20, 2006 by unfairly and deceptively (1) claiming as explanation for its failure to provide any requested date that Lexis Nexis Accurint is not a consumer reporting agency subject to the jurisdiction of 15 U.S. C. §1681 et seq. and specifically claiming as further as explanation for the failure to provide access to the data, (2) that Lexis Nexis Accurint data is not permitted to be utilized to make employment decisions to thereby invoke the regulations of the Fair Credit Reporting Act.

Upon information and belief, the unfair and deceptive actions of Lexis Nexis Accurint were performed willfully and knowingly. The written characterizations of the actions and responsibilities of Lexis Nexis Accurint and the subsequent treatment of my requests for data were unfair and deceptive, violated the above cited state and federal statutes as well as general principles of fair dealing and public policy.

As of the date of the writing of this demand letter I have received no file data or information in response to my multiple requests. As a result I am unable to relieve the injury and harm created and perpetuated by Lexis Nexis Accurint data dissemination, protect myself from additional injury and harm by stopping future dissemination of false and injurious data or correct and mitigate all previous injury that the Lexis Nexis Accurint data has already caused to me.

Where Lexis Nexis knew, or should have known, that (1) Gall and Gall Company is engaged in the business of providing employment background checks and (2) that Gall and Gall Company routinely uses data supplied to it by Lexis Nexis Accurint to provide background check reports to client/employers for decision-making purposes as to prospective employees, (3) where Lexis Nexis Accurint openly, knowingly and routinely permits Gall and Gall Company to use Lexis Nexis Accurint data for employment decision making purposes; (4) where Lexis Nexis Accurint is the sole source and holder of the injurious data; that Lexis Nexis Accurint's own actions subjected itself to the jurisdiction and authority of the Fair Credit Reporting Act, M.G.L. c. 93 and every single other related state and federal common law, statute and regulation governing such data compilation, retention and dissemination and that such failures resulted in a knowing and unfair deception and failure to afford me my rights under the law thereby causing injury and damage.

As a result of the unfair and deceptive acts and practices of Lexis Nexis Accurint, I have suffered injury, including defamation and financial loss.

In light of the foregoing, I demand the following relief:

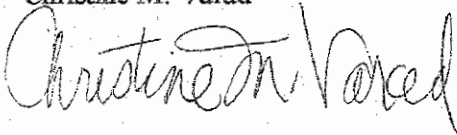
1. Immediately provide all of the requested data and information.
2. Make full restitution for lost employment and lost employment licensing opportunities resulting from the false data dissemination.
3. Make full restitution for any and all resulting defamation and related injuries.
4. Provide full and open access to my representative to Lexis Nexis Accurint premises and electronic databases therein to verify and insure that all data having any connection with me has been provided as demanded and has been corrected against any and all additional injury.

Pursuant to M.G.L. c. 93A, you have thirty (30) days from your receipt of this letter to respond with a reasonable offer of settlement. If you fail to do so, that statute provides that you will be liable for multiple damages and the attorney fees I may incur for the prosecution of this action.

I can be contacted at 781 545 5506 or by mail at the address below. Thank you for your attention to this matter.

Sincerely,

Christine M. Varad



CHRISTINE VARAD
P.O. BOX 593
MILTON, MASSACHUSETTS 02186

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John M. Byrne
Director & Senior Corporate Counsel
Phone 561-999-4436
Fax 561-981-0869
john.byrne@lexisnexus.com

June 20, 2006

Christine Varad
P.O. Box 583
Milton, MA 02186

RE: Incorrect Information on Accurint Report

Dear Ms. Varad:

Thank you for your letter of June 3, 2006 in which you errantly suggest Accurint violates certain laws or your rights under certain laws. You further errantly suggest Accurint is a consumer reporting agency, and that you were somehow unfairly deceived when you learned that Accurint is not a consumer reporting agency. Kindly permit this letter to attempt to address and correct certain assumptions of yours as discussed herein.

A consumer reporting agency is loosely defined as an entity that regularly engages in the practice of assembling and evaluating information on consumers for the purpose of furnishing consumer reports to third parties. Accurint does not engage in the practice of providing consumer reports, and as such Accurint does not meet the definition of a consumer reporting agency. Accordingly, and as prior correspondence has made clear to you, Accurint is not a consumer reporting agency.

Additionally, the information Accurint provided to our customer, Gall and Company, does not meet the definition of a consumer report. A consumer report is a communication by a consumer reporting agency which bears on a consumer's credit worthiness, credit standing, credit capacity, character, reputation, personal characteristics, or mode of living used to establish eligibility for, among other things, credit and employment. Accurint provided Gall and Company with identity verification information, such as name, address, and telephone number. Name, address, and telephone information does not bear on a consumer's credit worthiness, credit standing, credit capacity, character, reputation, personal characteristics, or mode of living, as such terms have been defined and interpreted by applicable statute, case law, and regulatory opinion. Accordingly, as Accurint did not report information which could bear upon your personal characteristics, the information provided to Gall and Company is not considered a consumer report.

Notwithstanding the foregoing, as customers' use of Accurint for Fair Credit Reporting Act permissible purposes is expressly prohibited by contract since Accurint is not a consumer reporting agency, upon receipt of your allegations Accurint audited Gall and Company to ensure their use of Accurint was in accord with their contractual obligations. Accurint's audit determined Gall and Company used Accurint data for identity

verification purposes and for no other purposes. As such, Gall and Company's use of Accurint was within the scope of their contractual obligations.

You additionally dispute the accuracy of certain addresses contained in Accurint. As Accurint is not a consumer reporting agency, Accurint does not investigate or correct information contained in Accurint, and Accurint is not under any legal obligation to do so. Nor is Accurint under any legal obligation to disclose the source of Accurint's data. That said, however, a letter of May 22, 2006 directed you to contact the three credit reporting agencies to obtain and dispute potentially errant data.

Finally, in one of your communications you raise the issue of potential identity theft. If you are a victim of identity theft, you must submit a copy of a police report documenting the identity theft and complete the enclosed Identity Theft Affidavit.

I trust this communication addresses your relevant concerns and I now consider this matter closed.

Very truly yours,



John M. Byrne
Director and Senior Corporate Counsel